UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

EXXONMOBIL OIL CORPORATION,

Plaintiff,

v. 16 CV 9527 (ER)

TIG INSURANCE COMPANY,

Oral Argument

Defendant.

----------x

New York, N.Y.
February 1, 2017
2:30 p.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

COVINGTON & BURLING LLP
Attorneys for Plaintiff
BY: DONALD BROWN
ALLAN B. MOORE

CARROLL MCNULTY KULL LLC
Attorneys for Defendant
BY: HEATHER E. SIMPSON

(Case called)

MR. BROWN: Good afternoon. Donald Brown, Covington & Burling, here for ExxonMobil Oil Corporation.

MR. MOORE: Allan Moore for ExxonMobil, also with Covington.

MS. SIMPSON: Good afternoon. Heather Simpson from Carroll, McNulty & Kull on behalf of TIG Insurance Company.

THE COURT: Good afternoon to you all.

This matter is on for argument. ExxonMobil is asking me to compel TIG Insurance to proceed to binding arbitration and to require it to dismiss the lawsuit it has, declaratory judgment suit it has brought in New York State Supreme Court concerning a contract of insurance.

So, Mr. Brown or Mr. Moore, let me begin with you. You can remain seated or you can use the podium or you can stand at the table, whatever makes you most comfortable.

MR. BROWN: I'll go back and forth. We'll see. Thank you, your Honor. Appreciate it.

THE COURT: Okay.

MR. BROWN: So, yes, as your Honor said, we are here petitioning for an order both compelling TIG to arbitrate the dispute we have with them and not to proceed with the state court proceedings they filed next door. We moved pursuant to the Federal Arbitration Act, specifically Section 4. The provision in the insurance policy that is an arbitration

provision that's known as the alternative dispute resolution endorsement, I don't know if your Honor has it in front of you, but if not, I have a copy of that page to hand up to the Court.

THE COURT: I have endorsement No. 11 in front of me.

MR. BROWN: Okay. Generally speaking, your Honor, what I would like to briefly address in my time this afternoon is four things: (1) what that ADR endorsement says and what it means; (2) how TIG would have the Court read the endorsement; (3) how and why TIG's reading of the endorsement both does not comport with its language and, on reflection, really does not make sense; (4) how the strong public policy favoring arbitration affects the analysis here.

THE COURT: Okay.

MR. BROWN: Maybe I'll start there. As this Court well knows, Section 4 of the FAA requires courts, mandates courts, order arbitration if there is an enforceable arbitration agreement between the parties that encompasses the claim at issue. The public policy is strong. The courts strongly favor arbitrations. The Second Circuit said in *Collins*, "Federal policy requires courts to construe arbitration clauses as broadly as possible." And also, the party resisting arbitration, TIG here, it bears the burden of proving that the claims at issue are not subject to arbitration, whether TIG is denying that there is an agreement to arbitrate and/or TIG is denying that the agreement to

arbitrate encompasses the claims at issue here, the burden of proof rests with them.

So if we may, your Honor, let's look at Endorsement 11.

THE COURT: Okay.

MR. BROWN: It's going to sound like I'm going to read the whole thing to you, but I promise you, I'm not. It starts out in the introductory paragraph saying that if the company, which is TIG, and the insured disagree after making a good faith effort to reach an agreement on an issue concerning this policy, either party may request that the following procedure be used to settle such disagreement.

As an aside here, noting the reference to making a good faith effort to reach a compromise, at least four times in their brief TIG, almost as an aside but a little bit snidely, says ExxonMobil did not request arbitration until after TIG filed its lawsuit on November 30. I think we've made it clear in our papers, but we had been engaging in a good faith effort, first of all, to see whether we had a disagreement by meeting with TIG in Dallas on November 3. It was our first meeting to talk about this claim. And at that meeting, which was a settlement meeting, and I will not get into it in any detail, we ended by them saying they needed to go back East to talk to some people, and they would get back to us about further discussions. That's where we were when they out of the blue

sued us.

So the notion that we sat on our rights, that we had no intention to arbitrate if there were a dispute, and that we're only doing it in response to this lawsuit they filed is not correct. We were exercising our rights, seeking a good faith compromise when, without warning, a shot was fired.

THE COURT: In any event, the filing of a lawsuit by one party, does that prohibit the other party from seeking arbitration at that point?

MR. BROWN: No, they raise the point only as a point of persuasion rather than a point of preclusion, I think. That's the way I look at it.

THE COURT: Okay.

MR. BROWN: In the paragraph numbered 1, it says, the endorsement: Either the company or the insured may request to the other in writing that the dispute be setted by an alternative dispute resolution, ADR process, selected according to the procedures described herein. That reference to "procedures," plural, is a reference to the two alternative procedures down below for selecting the type of ADR process to be used. And the first procedure for selecting the type is in paragraph 2. Paragraph 2 provides, in essence, that if the parties agree to jointly select an ADR process, that's how it "will be done." If they agree to do it that way, it will be done that way.

The other alternative procedure for selecting the type of ADR process is paragraph 4. If the parties cannot agree on an ADR process within 90 days of the written request described in paragraph 1, the parties shall use binding arbitration. This paragraph 4 read with paragraph 1, to which paragraph 4 explicitly, expressly refers, there is no reference to paragraph 2, paragraph 1 and 4 together say this. One provides that either party may request ADR and, if the parties cannot agree to the type of ADR, four provides they shall enter into mandatory arbitration. This is a mandatory arbitration clause, pure and simple.

THE COURT: Give me some history, if you would, Mr. Brown. In your reply brief you talk about it a little more. But this contract used to have some sort of standard form binding arbitration provision; correct?

MR. BROWN: Yes.

THE COURT: And then at some point it switched over to Endorsement No. 11?

MR. BROWN: No, it was issued with Endorsement No. 11. I don't know how familiar you are with the insurance industry, but it's commonplace to start with a policy body, and then issue it on day one with -- I've seen as many as 100 endorsements, but this was an original endorsement issued on the first day.

THE COURT: Once upon a time I used to work under

Barry Ostrager, so I know a little about this stuff.

So you used a standard form policy, and then this endorsement was included. How am I supposed to interpret this endorsement?

MR. BROWN: Well, the way I just said is how you should interpret it. It says either party can initiate ADR. Once a party initiates ADR, the other party has two choices, either to say I will agree to the type of process with you or not agree, in which case there's a default in paragraph 4, which is mandatory arbitration.

THE COURT: Okay.

MR. BROWN: TIG wants your Honor to look at the first clause in paragraph 2. It says if the company and the insured agree to so proceed. They want your Honor to conclude that that refers to an agreement to have an ADR at all. It's our position that it is more logically and syntactically understood to refer to the rest of the sentence it is in; that is, it's a reference to if the parties agree that they will proceed by procedure one for selecting an ADR process, mutual agreement, then they "will do so." If they don't agree to do that and 90 days pass, paragraph 4 kicks in, mandatory arbitration.

So they have an option to agree to something else, but if they can't within 90 days of the request, mandatory arbitration under paragraph 4. That's a more logical and syntactical reading of it. As we said in our brief, it's a

sentence much like if the parties agree, they will do such and such. If the parties agree to operate in this way, they will do so. That's why it says "will." If that meant if the parties agreed to ADR, rather than if the party agree to select the ADR by joint selection, if it meant if the parties agree to ADR, it would go on to say, then they may agree to the process. But it says "will," will, because the preceding clause is talking about an agreement to do so, in which case they will do so. If they don't do so, paragraph 4 is the default, binding mandatory arbitration.

TIG argues in their papers that the ADR endorsement, eight detailed paragraphs about how to resolve disputes through ADR, is nothing more than an agreement to arbitrate if, when asked, TIG agrees to arbitrate. That really makes no sense when you think about it for at least two reasons that I'll highlight. TIG's interpretation boils that whole eight-paragraph provision, a full page, down to this and no more than this, an agreement that is "TIG agrees to arbitrate if and when TIG agrees to arbitrate. That's what they say: We will arbitrate if and only if we agree to arbitrate.

That makes no sense. Such a provision would accomplish nothing because a party will always agree to arbitrate if a party agrees to arbitrate, or a party will agree to ADR if a party agrees to ADR. There's no need to have any contractual provision that says so. And the notion that the

parties would prepare and agree to a detailed process, such as we've seen in Endorsement No. 11, when really all it says is if the parties agree later to arbitrate, they will arbitrate, it's a pointless provision. And it's sort of silly to think they went through that exercise for no point.

I mean, indeed, if a request is made for ADR now and it works the way TIG says and it only goes into play if they agree, they can say, or the other way around, I could say if she asks me: Well, sure, we'll do ADR, but if, and only if, and then set out 12 other criteria, none of which is in here, as a condition for agreeing to ADR. This is a meaningless provision other than if we agreed down the road to arbitrate, we'll arbitrate.

THE COURT: I take it that since there was no case that specifically attempted to interpret this precise endorsement, at least none that was cited to us, I take it that there is no such case out there?

MR. BROWN: We've looked and haven't found one, your Honor.

THE COURT: That leads me to the question, is this endorsement *sui generis* or is this something standard in the industry? Was it customized by the parties?

MR. BROWN: I don't know the answer to that. My best guess is, it's an educated guess, that it was crafted by the broker working with the parties, but I don't really know. It's

not *sui generis* in the sense that I've never seen anything in there before, but in toto, I've not seen anything like this before.

THE COURT: Okay.

MR. BROWN: Last point, and it's a point coming off the point I just made, the second reason TIG's interpretation makes no sense. You see paragraph 4, it's the biggest paragraph, it's the part, if the parties cannot agree on an ADR process within 90 days, the parties "shall use binding arbitration." If TIG's interpretation were correct, paragraph 4 never will or would or could ever be invoked.

Here's what I mean. If one party says: I want to do ADR process, the other party, who I'm going to presume does not want binding arbitration, can say -- if a precondition is they have to agree to ADR, they can say: I will agree to ADR if, but only if, you agree it will not be binding arbitration. And if you're insisting that it be binding arbitration, then I'm not going to agree. In that way there would never be binding arbitration under this provision unless both sides mutually agree.

That makes paragraph 4, and as Mr. Ostrager will tell us, mere surplusage -- I should say Justice Ostrager -- and we cannot interpret contracts that turn provisions into meaningless mere surplusage provision. This endorsement needs to be interpreted to give paragraph 4 meaning and effect by

interpreting the endorsement as an agreement to enter into an ADR and an agreement to enter into a binding arbitration if the parties cannot otherwise agree on another process.

THE COURT: Okay.

MR. BROWN: Thank you, your Honor.

THE COURT: Ms. Simpson.

MS. SIMPSON: Thank you, your Honor, and I'll keep my comments brief. I think the arguments were pretty well framed in the briefing.

As Mr. Brown stated, there's generally a two-part test to determine whether a matter should be sent to arbitration. The first prong is whether there's a valid agreement to arbitrate. The second is whether the particular dispute is within the scope of that agreement. A party cannot be compelled to arbitrate a dispute for which it had not previously agreed to arbitrate. And in determining whether a party so agreed, courts will apply ordinary contract interpretation principles.

Moving to the document itself, Endorsement No. 11, as your Honor noted, the policy originally included a binding London arbitration provision. And the parties agreed, by way of Endorsement 11, to delete that endorsement, delete that onerous binding arbitration obligation, and to instead replace it with Endorsement 11 which is a much more flexible ADR endorsement that puts the power of the mechanism in the

parties' hands.

THE COURT: Let me ask you this before you go on, and I'm sorry to interrupt. Do you agree that the precise dispute between you is arbitrable, assuming from your perspective both sides agree to arbitrate it?

MS. SIMPSON: Sure. Your Honor, if both parties agree to arbitrate, I believe they would be within their rights under this policy, under this endorsement, to do so.

THE COURT: Okay.

MS. SIMPSON: So the analysis we've set forth in the brief of how you interpret this is basically a three step process which we believe Exxon truncates to a two step and leaves out an important middle step.

First, and I think we all agree, step one says either party may request in writing that the dispute be settled by an alternative dispute resolution process. I would note here, your Honor, that the language is may request. It's not may demand, may invoke, may enforce. It's request in writing. So right there, just with the language that's used, it implies that there would have to be some sort of acceptance to that request to move forward.

The second step, which Exxon seems to either skip past or really misconstrue, is paragraph 2. If the company and the insured agree to so proceed, they will jointly select an ADR process for settlement of the dispute. So what that is

basically saying is if Exxon requests that they want to use ADR and we say, Hey, ADR sounds great. We don't want to be in court, we can talk with Exxon and decide which ADR mechanism would be the best for our dispute.

Step three, and that's paragraph 4, if we can't agree, if I say I want arbitration with three arbitrators and he says I want it with one, I say I want to have it in Seattle, he says he wants to have it in New York, we can't agree, 90 days go by, well, boom, we go to four; and then we are told if we can't agree, we will go to binding arbitration.

THE COURT: Now, the petitioner characterizes your reading of this endorsement as, essentially, it being an agreement to agree. Why isn't it? And if it is, is it enforceable?

MS. SIMPSON: Your Honor, I do not believe it is an agreement to agree because it's setting forth a specific mechanism to save the parties time and effort in the event of an impasse. It's basically saying any party can request ADR. You're not bound to use ADR. There's nothing in here that prohibits litigation. There's nothing in here that says you must use this process. It just says: Hey, if you want to use this process to use ADR for a dispute, this is what you're going to do. And if you reach a stalemate after 90 days, it's over; this is the process you're using.

That could come in handy a lot, your Honor, because

oftentimes I've been involved in cases where we both agree to binding arbitration, but for months and months we're fighting over logistics, how many arbitrators, where we're going to have it, all those variables that this endorsement would take care of in the event that both parties agree to ADR but fight over the mechanism.

So I don't think it's an agreement to agree. I think it does have a purpose. It's not rendered meaningless, by our reading. It's just ensuring that both parties are comfortable with using ADA. Mr. Brown will say: Well, this agreement just says if TIG wants to arbitrate, then TIG gets to arbitrate. It works both ways. If we serve them with an arbitration demand and they didn't want to arbitrate, they'd be able to voice that opinion as well.

THE COURT: The value, from your perspective, that this endorsement provides is that if there is an agreement to arbitrate, then this provides a mechanism for ensuring that there's arbitration at the end of the day?

MS. SIMPSON: That's partially correct, because I think this is broader than arbitration. It's all ADR. So if you wanted to do some sort of mediation or hybrid proceeding, whatever you may want, you can do so. But this goes a step further and says, but at a certain point, we're going to tell you what you're going to do. And there's other things that are put in here. For instance, the expenses will be shared by the

parties. If it goes to arbitration, any award is capped at the limits of the policy. It wouldn't include extracontractual damages. So there's other things that are locked in here.

THE COURT: How would that work? So I go to you and I say, I want to arbitrate; and you say, Okay. And then we fight about it; and then you say, Okay. I don't want to arbitrate. What happens? Or I want to engage in some sort of ADR.

MS. SIMPSON: Well, I think, once a party has accepted the concept of ADR, once you go down that road, you open the door, so to speak, you may be subject to the binding default. But not when you say: No, I'm not going to engage in ADR. I don't have an interest in that, and I want to litigate, which is my right under this policy. There's nothing in the whole policy that prohibits litigation.

THE COURT: Okay. That's not what happened here; correct? I mean, when you had these discussions prior to your bringing suit across the street, there was no talk of arbitration or ADR or this endorsement.

MS. SIMPSON: There was not. There's correspondence exchanged over the course of a year. We did have one meeting, as Mr. Brown indicated. Not getting into specifics, but it definitely wasn't left at that meeting that we were on the brink of getting something done. We did not bring a suit until almost a month later. The references to timing that we put in our brief were more just to show that at the time we filed, we

weren't doing it in the face of a request to arbitrate, because had we been, we might have some obligation to talk with them or decline the request. We filed a state court action, as is our right under the policy, before there had been any request to arbitrate this dispute.

I think your Honor's right. The timing's not really relevant here. I think the issue is that they made a request to do ADR. We do not agree, and so therefore we are not bound by paragraph 4. When we read their reply brief, it was confusing, frankly. I think they come up with a quite tortured reading to get where they want to go. And I understand why that's their position, and they have to come up with a textual argument, but it's certainly a lot of grammatical or syntactical gymnastics to get there. I think it can be boiled down to them converting paragraph 2 to a statement that says, if the parties agree to agree, they will agree. That's basically the way they would have the Court construe paragraph 2, and that simply is not a logical reading, I would submit.

THE COURT: I think that's what they're saying you are saying.

MS. SIMPSON: No, they're saying that's what we're saying about the endorsement in general, which I thought was ironic. But their example of how they construe two is if the parties agree to jointly select, they will jointly select. But that goes without saying that if we jointly agree to select, we

will do that. The language naturally follows upon paragraph 1 that says a party may request in writing to the other to employ ADR. If they so agree, if they agree to so proceed, then they will move on to the next step. That is our view. That's our reading. It's consistent with the plain language, which this Court is bound to apply under contract interpretation principles.

THE COURT: What should I do with that introductory paragraph?

MS. SIMPSON: Your Honor, I mean, I see the introductory paragraph just kind of echoing the sentiment that this isn't a mandatory endorsement at all. If a party wants to initiate an attempt to complete ADR, they may request it. I'm not sure what I'm missing here.

THE COURT: Why doesn't that trigger the process?

MS. SIMPSON: It triggers the process if we say: Yeah, hey, ADR sounds great, then we're in this process.

THE COURT: But that's not what that paragraph says. This says either party may request. So the party requests, why isn't the process started at that point?

MS. SIMPSON: The process is started, your Honor, and then it comes to number two, and number two tells us if the company and the insured agree to so proceed with the ADR process, they will jointly select, or if they can't, then they'll go to mandatory arbitration. Step two gives that other

party the right. And, again, I would echo back to the language. What does request mean? If it was automatic and it was unilateral, they could just say: We want arbitration, and we're entitled to it. Why would it say request? This --

THE COURT: Because they can go to court, but they've requested an alternative method. And having requested an alternative method, now there are obligations on both sides.

MS. SIMPSON: I don't read it that way, your Honor, because I think step two necessarily tells us that the parties have to agree to move forward with ADR, and that's why they have a flexible ADR endorsement and not one -- it would be very easy, your Honor, to just say either party can submit this to binding arbitration, and here's how we're going to do it. That's not what it says. And keeping in mind that this was put in deliberately after one mandatory arbitration clause was removed would lead me to believe that this is giving the parties more flexibility, and it's not going to allow anyone to be pushed into arbitration unless they agree to do so. And that is fair because no party can be deprived of their right of litigation unless they agree to do so, and that's why step two says if the company and the insured agree to so proceed.

THE COURT: Okay.

MS. SIMPSON: Your Honor, I think I've stated all my points. We believe we have a textually logical interpretation of the language, despite Mr. Brown's reference to the federal

policy in favor of arbitration. That policy does not trump basic contract interpretation that the language must be enforced as written.

THE COURT: Is their reading of it illogical?

MS. SIMPSON: I believe it is illogical, your Honor, because why would you need to say if we agree, then we agree?

THE COURT: Okay.

MS. SIMPSON: That's all, your Honor.

THE COURT: Mr. Brown, I'll give you the last word, if you wish.

MR. BROWN: Yes, a few points. One, it was said that there's nothing in the policy that prevents litigation. I suppose other than Endorsement 11, if it does, if someone requests ADR. There is nothing in the policy elsewise that supports the notion of litigation. There's no service of suit clause. There's no choice of venue clause. There's no choice of law clause for a company that does business all around the world. I'm not saying that's dispositive, but that's the side of that story. It doesn't reflect an intention to litigate; it only reflects this option that either party can exercise to go into an ADR process.

Second point, yes, Endorsement 11 replaces Condition O. Actually, not really. Endorsement 10 deletes Condition O, and then Endorsement 11 is there and says what it says. It is more flexible than what Condition O said. Condition O said

"shall." This one is we shall in paragraph 4 if one side invokes it, so it is more flexible. If neither side invokes it, as your Honor said, they can go to court. The first one didn't allow that. The first one required us to arbitrate in England; this one requires us to do it in New York. The parties changed their mind about that. This one, Endorsement 11 is not limited in its possibilities to arbitration. There is the possibility of nonbinding arbitration, mediation, etc. The provision itself even says, or something else not in this provision to be agreed to.

So, yes, it is more flexible. But if the parties intended to agree to nothing more than if down the road we agree to ADR, we'll agree to ADR, all they had to do was take Condition O out and not replace it. Replacing it with this detail, as I've argued already, tells us that if one party invokes ADR, this becomes a mandatory provision.

Third point, your Honor in colloquy with counsel asked whether the intention on TIG's part was that if this gets invoked in the end, mandatory arbitration would be preserved as the final option. This gets back to my point before. Ms. Simpson sort of blithely said if we asked or they asked for ADR in step two, the other side has to say yes or no. They don't have to say yes or no. In our interpretation, they have to say, we will jointly stipulate to a process with you and then do it or not, in which case four comes in. But even under

Ms. Simpson's interpretation, they don't have to just say yes or no. As I said, they can say yes, but only if, and anything you can imagine could come after "only if," if you interpret this endorsement the way she does, which is we can't do anything in terms of an ADR process without TIG's agreement.

And if TIG could say if, but only if, they can say only if it's in England, they can say only if we get to pick the arbitrator and you don't; but they could also say only if we're not going to have arbitration, because they don't want to have an arbitration. In which case, that default mandatory arbitration provision is not preserved. It's easily avoided. It's completely avoidable. And if you have a case where one party does not want that default, it will not happen ever.

As I said in my opening remarks, we just can't interpret it in a way such that provision four goes away altogether, which TIG's interpretation would do. Thank you, your Honor.

THE COURT: Thank you.

Give me five minutes. I'll give you an answer.

(Recess)

THE COURT: Petitioner herein seeks to compel arbitration pursuant to Section 4 of the Federal Arbitration Act, which is at 9 U.S.C. Section 4. Under the FAA, the role of the courts is limited to determining two issues: (1) whether a valid agreement or obligation to arbitrate exists and

(2) whether one party to the agreement has failed, neglected, or refused to arbitrate, citing *Shaw Group Inc. v. Triplefine International Corp.*, which is reported at 322 F.3d 115. Respondent has not challenged the second element, whether one party to the agreement has failed, neglected, or refused. Therefore, the issue before the Court under the FAA Section 4 is whether a valid agreement or obligation to arbitrate exists.

The United States Court of Appeals for the Second Circuit has set forth a two-part test to evaluate arbitrability of claims, requiring a determination as to, first, whether there exists a valid agreement to arbitrate at all under the contract in question, and if so, secondly, whether the particular dispute sought to be arbitrated falls within the scope of the arbitration agreement, citing *Hartford Accident & Indemnity Co. v. Swiss Reinsurance*, which is reported at 246 F.3d 219.

In considering whether arbitration is required under the FAA, courts have applied state law contract interpretation principles; and, therefore, the Court applies the law of New York. And under New York law, the words and phrases in the contract must be given their plain meaning so as to define the rights of the parties, citing *Mazzola v. County of Suffolk*, 143 A.D.2d 734. That's a Second Department case.

The key language underlying the parties' dispute is the first clause of paragraph 2 of Endorsement 11. Paragraph 2

states in full: "If the company and the insured agree to so proceed, they will jointly select an ADR process for settlement of the dispute." Respondent argues that "if the company and the insured agree to so proceed" refers to whether the parties agree to proceed to an alternative dispute resolution process at all. Petitioner argues that the clause refers to whether the parties agree to jointly select an ADR process, such as mediation or binding arbitration, and not whether the parties agree to some form of ADR.

The Court agrees that the plain meaning of paragraph 2, construed within the context of the entire endorsement, is that the reference to "agree to so proceed" relates to and draws its meaning from the language that immediately follows, that is, "jointly select an ADR process," rather than the language in paragraph 1, as respondent suggests. Paragraph 2 is a sentence that contains an introductory clause which provides background information for the independent clause which follows after the comma. In this case, the clause begins, the introductory clause, with the conjunction "if." The subordinate clause "if the company and the insured agree to so proceed" relates to the remainder of the sentence's independent clause which states that they will jointly select an ADR process for settlement of the dispute. Therefore, under the plain meaning of the contract, either party can invoke the endorsement by requesting in writing that

a dispute be settled using an ADR process, and then the specific ADR process is chosen either jointly by agreement or defaults to binding arbitrations if the parties cannot agree.

Additionally, as respondent properly points out, under New York law a contract will be construed so as to give force and effect to all of its provisions, citing *Trump-Equitable Fifth Ave. Co. v. HRH Construction Corp.*, which is cited or reported at 106 A.D.2d 242, a First Department case. However, respondent's petition asks this Court to treat this endorsement as purely voluntarily, as if the parties adopted the endorsement without intending it to have any binding effect absent some further agreement. Respondent's interpretation that the language "if the parties agree to so proceed" refers to an agreement to use ADR at all would render the entire endorsement an unenforceable and superfluous agreement to agree, under which neither party could require any form of ADR absent some further agreement.

In short, paragraph 2 provides that the parties may agree to proceed by jointly selecting an ADR process. However, if the parties cannot agree on a particular process, then the second alternative is triggered, and they must proceed to binding arbitration. Paragraphs 2 and 4 work together, the former providing for an agreement on a particular procedure, and the latter requiring binding arbitration.

This interpretation of the endorsement is consistent

with the federal policy in favor of construing arbitration clauses broadly. *See, for example, China Auto Care LLC v. China Auto Care Caymans,* reported at 859 F.Supp.2d 582, and that's a case from the Southern District of New York in 2012.

Therefore, the Court grants the petition to compel arbitration. The Court will retain jurisdiction to consider any issues that may arise after the arbitrators have rendered their awards and stay the proceedings in this matter pending arbitration, pursuant to the authority in *Katz v. Cellco Partnership*, which is reported at 794 F.3d 341, that's a Second Circuit case from 2015, and cert was denied by the Supreme Court and reported at 136 S.Ct. 596. And in the Second Circuit the Court noted the text, structure, and underlying policy of the FAA mandate a stay of proceedings when all of the claims in an action have been referred to arbitration and a stay requested.

Additionally, petitioner asked the Court to order respondent to discontinue its declaratory judgment action in the New York Supreme Court. As a general rule, courts are prohibited from enjoining proceedings in state court by the Anti-injunction Statute contained at 28 U.S.C. Section 2283. There are, however, exceptions to the statute. *See Atlantic Coast Lines Rail Company v. Brotherhood of Locomotive Engineers,* a Supreme Court case reported at 398 U.S. 281 from 1970. Pursuant to the Anti-Injunction Act, a Court may not

issue such a stay except as expressly authorized by act of Congress or where necessary in aid of its jurisdiction or to protect or effectuate its judgments. The courts in this district have consistently held that a stay, when issued subsequent to or in conjunction with an order compelling arbitration concerning the same subject matter as the state proceeding, falls within one or both of the latter two exceptions. *See, for example, Matter of Arbitration Between Nuclear Electrical Insurance Limited,* which is a Central Power & Light Company, reported at 926 F.Supp. 428, a Southern District case from 1996. Therefore, the petitioner's request to enjoin the respondent from proceeding in the New York State Supreme Court action is granted.

That constitutes the decision of the Court, unless there is anything further this afternoon from either side.

MR. BROWN: Nothing further here, your Honor.

MS. SIMPSON: No, your Honor.

THE COURT: We're adjourned.

(Adjourned)